superimposed on the video data [or] and/or audio data;

determining whether the medium to be reproduced is a medium dedicated to reproduction or a recordable medium; and

stopping reproduction in response to information reproduced by said [permission] information reproducing step indicating that copying once was permitted and a result of said determining step indicating a medium dedicated to reproduction.

REMARKS

By the above amendment, claims 1-8 and 10-16 have been amended to clarify features of the present invention, in that a combination of video data and audio data may be recorded. Furthermore, many of the claims being amended to eliminate "means" language with the claims being amended to refer to structure in terms of a circuit or a unit operating in the manner set forth. Also, an error in the specification has been corrected.

The rejection of claims 1-2, 4, 6, 14 and 16 under 35 U.S.C. §102(b) as being anticipated by Tozaki et al (U.S. Patent No. 5,729,516); the rejection of claims 3, 5, 7 and 15 under 35 U.S.C. §103(a) as being unpatentable over Tozaki et al in view of Kuroda et al (U.S. Patent No. 5,815,472); the rejection of claims 8 and 9 under 35 U.S.C. §103(a) as being unpatentable over Tozaki et al in view of Takemura et al (U.S.

Patent No. 5,809,007); the rejection of claim 10 under 35 U.S.C. §103(a) as being unpatentable over Tozaki et al in view of Doi (U.S. Patent No. 5,901,125); the rejection of claim 11 under 35 U.S.C. §103(a) as being unpatentable over Tozaki et al in view of Takemura et al and further in view of Doi; the rejection of claim 12 under 35 U.S.C. §103(a) as being unpatentable over Tozaki et al in view of Yokota et al (U.S. Patent No. 5,633,841); and the rejection of claim 13 under 35 U.S.C. §103(a) as being unpatentable over Tozaki et al in view of Takemura et al and further in view of Yokota et al; such rejections are traversed insofar as they are applicable to the present claims, and reconsideration and withdrawal of the rejections are respectfully requested.

At the outset, it is noted that Tozaki et al is utilized as the primary reference taken alone under 35 U.S.C. §102(b) or in combination with other cited art under 35 U.S.C. §103(a) and as will be discussed below, contrary to the positions set forth by the Examiner, Tozaki et al does not provide support for the claimed features in the sense of 35 U.S.C. §102 or 35 U.S.C. §103.

Reference is initially made to the decision of Ex parte Levy, 17 USPQ 2d 1461 (PTO of Bd. of App. & Int. 1990), wherein the board pointed out that the factual determination of anticipation requires the disclosure in a single reference of every element of the claimed invention and it is incumbent

upon the Examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference.

Furthermore, reference is made to the decision of In re Fine, 5 USPQ 2d 1596 (Fed. Cir. 1988), wherein the court pointed out that the PTO has the burden under §103 to establish a prima facie case of obviousness and can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. As noted by the court, whether a particular combination might be "obvious to try" is not a legitimate test of patentability and obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. As further noted by the court, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

At the outset, it is noted that the present invention is directed to a reproduction apparatus or method for reproducing video data and/or audio data from a medium dedicated to reproduction or a recordable medium having video data and/or audio data recorded thereon. As described in the specification of this application and as set forth in the claims, the video data and/or audio data is generated by

superimposing information concerning copying permission on a digitized video signal and/or audio signal or embedding the information therein. In particular, the present invention is directed to prohibiting unauthorized reproduction, where the medium is a medium dedicated to reproduction. Thus, referring to claim 1, for example, and as illustrated in Fig. 1 of the drawings of this application, a reproduction unit reproduces the information concerning copying permission superimposed on or embedded in the video data which may be considered to be represented by the reproduction unit having the copying permission information detection unit 108. Also, there is provided a determining unit which determines whether the medium to be reproduced is a medium dedicated to reproduction or a recordable medium which may be represented by the disk identification code detection unit 107, as illustrated in Fig. 1. In accordance with the present invention, a stopping unit represented by the disk reproduction stopping signal generation unit 109, for example, is provided which stops reproduction in response to the information reproduced by the reproducing unit, indicating that copying once was permitted and a result of the determining by the determining unit 108, for example, that the medium is a medium dedicated to reproduction, such that in accordance with the present invention, reproduction is no longer authorized and the reproduction is stopped. Applicants submit that such features

as set forth in claim 1 as well as the corresponding features set forth in the other independent and dependent claims of this application are not disclosed by Tozaki et al in the sense of 35 U.S.C. §102 or 35 U.S.C. §103.

In setting forth the rejection based upon Tozaki et al, the Examiner contends that Tozaki et al discloses "means for determining whether the medium to be reproduced is a medium dedicated to reproduction or a recordable medium; and means for stopping reproduction in response to that the information reproduced by permission information reproducing means indicates that copying once was permitted and a result of the determining by the determining means indicates a medium dedicated to reproduction". Irrespective of the comments by the Examiner, applicants submit that Tozaki et al fails to disclose or teach such above-noted features. Applicants note that as set forth in the object of Tozaki et al in col. 2, lines 51-56, "it is an object of the present invention to provide an information recording medium, a recording and reproducing apparatus of the same with which the permissibility of digital copying the subject information is known before actually starting the copying operation. Thus, Tozaki et al is directed to determining whether copying is permitted or not and controlling in accordance therewith. In contradistinction, the present invention differs from Tozaki et al in that the present invention contemplates that when

only once copying of a content such as a broadcast program is permitted, an unauthorized or pirated disk in which after being copied on a DVD-R (once rewritable) or a DVD-RAM (rewritable) disk, and the content was further recorded on a DVD-ROM (non-rewritable) disk therefrom without authorization reproduction is stopped or inhibited. In the present invention, for achieving this object, a DVD player is configured to determine a disk (medium) to be reproduced, has copy permission information superimposed on contents of the disk indicating only once copying permission and is a DVD-ROM. If such information is determined, the DVD player inhibits reproduction from the disk by way of stopping the reproduction and/or destroying data in the manner described. Irrespective of the contentions by the Examiner, Tozaki et al fails to disclose such operation and the structure thereof in the sense of 35 U.S.C. §102 or teach such operation and the structure thereof in the sense of 35 U.S.C. §103.

Applicants note that each of the independent claims recites substantially similar features in determining whether the medium to be reproduced is a medium dedicated to reproduction or a recordable medium and stopping reproduction in response to an indication that copying once was permitted and an indication that the medium is a medium dedicated to reproduction. Such features are not disclosed or taught by Tozaki et al in the sense of 35 U.S.C. §102 or 35 U.S.C. §103,

such that all claims present in this application patentably distinguish over Tozaki et al and should be considered allowable thereover.

With regard to the other cited art, applicants submit that the Examiner's combination of Tozaki et al with the other cited art represents a hindsight reconstruction attempt in complete disregard of the teachings of Tozaki et al while utilizing the principle of "obvious to try" which is not the standard of 35 U.S.C. §103. See In re Fine, supra.

Although the Examiner has contended that Tozaki et al has features corresponding to those claimed in this application, applicants submit that contrary to the position set forth by the Examiner, in addition to the deficiencies noted above, Tozaki et al does not disclose destruction of reproduced data so as to make the video data and/or audio data non-reproducible in the manner set forth in the claims nor other structural features as recited.

As to the combination of Tozaki et al with Kuroda et al, applicants note that Kuroda et al does not overcome the afore-described deficiencies of Tozaki et al. Moreover, Kuroda et al discloses the utilization of a buffer memory and a stop controlling process to stop recording the processed information within a presently-recorded record unit among the record units, which includes the processed information which is being recorded by the recording process, when the detected

storage amount becomes less than a predetermined value. Moreover, ECC data are used for recovery of data destroyed area due to overwrite of data upon recording of data before and after on the disk, thereby avoiding a waste of recording area. As such, it is readily apparent that Kuroda et al does not overcome the deficiency of Tozaki et al as pointed out above, and fails to provide the claimed features as recited in claim 3, for example, taken alone or in combination with Tozaki et al. As such, applicants submit that all claims patentably distinguish over this proposed combination of references.

As to Takemura et al taken alone or in combination with Tozaki et al, hereagain, applicants submit that Takemura et al does not overcome the deficiencies of Tozaki et al as pointed out above. Furthermore, Takemura et al merely discloses forming an identification signal of a disk on a disk. In accordance with the present invention, such identification signal is reproduced so that the type of disk is determined and the type of disk is utilized with other information to determine whether or not reproduction is stopped, and Takemura et al provides no disclosure or teaching concerning the features as recited in the independent and dependent claims of this application. As such, all claims patentably distinguish over Takemura et al taken alone or in combination with Tozaki et al and any other cited art in the sense of 35 U.S.C. §103

and should be considered allowable thereover.

With respect to Doi, hereagain, Doi fails to overcome the deficiencies of Tozaki et al as pointed out above. While Doi discloses setting a suitable amount of light to a disk in accordance with the different type of reflectivity dependent upon the different type of disk, it is noted that claim 10, for example, recites the feature of a determining unit for determining whether the disk is a recordable medium or a medium dedicated to reproduction on the basis of the reflectance of the disk, and that the stopping unit stops reproduction in response to information that copying once was permitted and indication that the medium is a medium dedicated to reproduction. Clearly, Doi taken alone or in combination with Tozaki et al fail to provide such claimed features, such that claim 10 patentably distinguishes over this proposed combination of references in the sense of 35 U.S.C. §103.

As to the patent to Yokota et al, hereagain, this patent taken alone or in combination with Tozaki et al fails to overcome the deficiencies of Tozaki et al as discussed above. While the Examiner contends that Yokota et al teach means for detecting wobbled grooves existing on a disk and means for stopping reproduction when detecting means does not detect wobbled grooves, referring to col. 3, lines 43-55 of this patent, applicants submit that this portion of Yokota et al only discloses that wobbled pre-grooves are utilized and that

recording of data or reading of data is performed on the basis of address data obtained by detecting the pre-grooves. Yokota et al does not disclose an operation when the wobbled pre-grooves are not detected, contrary to the suggestion by the Examiner, and referring to claim 12 of this application, even assuming arguendo that Yokota et al discloses a wobbled detection unit, Yokota et al taken alone or in combination with Tozaki et al does not disclose a stopping unit for stopping reproduction provided that the information reproduced by the reproduction unit indicates that copying once was permitted and the wobble detecting unit does not detect wobbled grooves. Thus, applicants submit that all claims in this application patentably distinguish over Yokota et al taken alone or in combination with Tozaki et al and any other cited art in the sense of 35 U.S.C. §103.

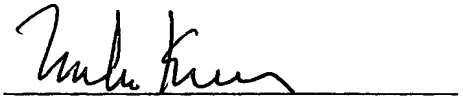
As is apparent from the above, the Examiner has taken bits and pieces from the prior art, suggesting that it is obvious to combine the same in an attempt to meet the claimed limitations. However, the cited art taken alone or in combination fails to disclose or teach the features as claimed in the independent and dependent claims of this application and the Examiner has engaged in a hindsight reconstruction attempt utilizing the principle of "obvious to try" which is not the standard of 35 U.S.C. §103. See In re Fine, supra. As such, it is apparent that the cited art fails to provide

the claimed features as set forth in the independent and dependent claims of this application in the sense of 35 U.S.C. §102 or 35 U.S.C. §103, and all claims patentably distinguish thereover.

In view of the above amendments and remarks, applicants submit that all claims present in this application should now be in condition for allowance and issuance of an action of a favorable nature is courteously solicited.

To the extent necessary, applicant's petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (500.37136X00) and please credit any excess fees to such deposit account.

Respectfully submitted,



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